



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 19, 1995

Mr. Ron Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR95-1448

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 28174.

The Texas Department of Public Safety (the "department") received a request for information relating to a traffic stop during which a suspect committed suicide. Specifically, the requestor seeks a department-generated videotape of the incident and other investigative materials in the department's possession relating to the incident. You have submitted the requested information to us for review and claim that sections 552.108 and 552.119 of the Government Code except it from required public disclosure.

Section 552.108(a) excepts from disclosure records of law enforcement agencies or prosecutors that deal with criminal investigations and prosecutions. When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. See *generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." See *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 444 (1986), 434 (1986).

You advise us that the person depicted on the videotape committing suicide is a suspect in a pending murder investigation that the Robinson Police Department is

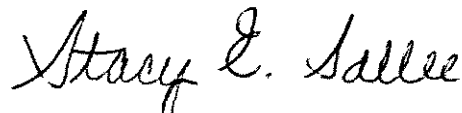
conducting. The Robinson Police Department claims that the requested information relates to its murder investigation and objects to its release. We conclude that portions of the submitted information relate to the murder investigation and may be withheld under section 552.108 if that investigation is still on-going. We have marked the information that may be withheld under section 552.108 if the investigation is on-going.

If the investigation is not on-going, the department may not withhold this marked information under section 552.108(a). However, the department must withhold the criminal history record information ("CHRI") found in the file under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the department is confidential. Gov't Code § 411.083(a). Therefore, the department must withhold this information. Please note, however, that driving record information is not confidential under chapter 411, *see* Gov't Code § 411.082(2)(B), and must be disclosed. We have marked the driving record information that must be released.

Section 552.119 of the Government Code prohibits the release of a photograph that depicts a peace officer as defined by article 2.12 of the Code of Criminal Procedure except in certain circumstances. The submitted videotape depicts peace officers. Before releasing the videotape, the department should ensure that the peace officers are not recognizable, unless one of the exceptions set forth in section 552.119 applies or the officers consent to the release of the videotapes in unredacted form.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Stacy E. Sallee".

Stacy E. Sallee
Assistant Attorney General
Open Records Division

Ref.: ID# 28174

Enclosures: Marked documents and submitted videotape

cc: Mr. Andrew L. Kilpatrick
Staff Writer
Waco Tribune-Herald
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Waco, Texas 76701
(w/o enclosures)